

# Scheuer, Yost & Patterson

A PROFESSIONAL CORPORATION

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September 20, 2010

**Submitted via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**Re: *In the matter of Request for Review by the Animas Public School District of  
Decision of Universal Service Administrator  
Letter of Appeal and Request for Waiver  
CC Docket No. 96-45  
CC Docket No. 02-6***

Dear Ms. Dortch:

1. **Name of Billed Entity.** This Letter of Appeal and Request for Waiver is submitted on behalf of the Board of Education for the Animas Public School District 6 ("Board" and "Animas District") in Animas, New Mexico.

<b>Billed Entity Name:</b>	<b>Animas Public School District 6</b>
<b>Form 471 Application Number:</b>	<b>427902</b>
<b>Funding Year:</b>	<b>2004</b>
<b>Applicant's Form Identifier:</b>	<b>2004200530</b>
<b>Billed Entity Number:</b>	<b>143316</b>
<b>FCC Registration Number:</b>	<b>0012816369</b>
<b>SPIN:</b>	<b>143022506</b>
<b>Service Provider Name:</b>	<b>Gov Connection, Inc.</b>
<b>Service Provider Contact Person:</b>	<b>Patricia Holland</b>

2. **Responsible Party.** The responsible party for receiving communications regarding the Board's appeal and request for waiver is the Board's counsel:

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Scheuer, Yost & Patterson, P.C.  
Attn: Charlotte H. Hetherington, Esq. / Kristin L. Davidson, Esq.  
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[chh@santafelawyers.com](mailto:chh@santafelawyers.com) / [kld@santafelawyers.com](mailto:kld@santafelawyers.com)

**3. Description of USAC action being appealed.** This appeal is submitted pursuant to 47 C.F.R 54.700 *et seq.* The Board appeals USAC's Funding Commitment Adjustment Report, dated July 21, 2010, ("Adjustment Report") in which the USAC determined that the commitment for the 2004 funding year ought to be rescinded in the full amount of \$85,605.26. A true and correct copy of the Adjustment Report is attached hereto as Exhibit "A" and incorporated herein by reference. The USAC's demand in the Adjustment Report follows an investigation and site visit in May 2006 in which no fraud or abuse was noted. For example, there is no finding by USAC that, during the 2004-2005 funding year, the Animas District misused the E-rate funds or that the service provider did not provide the requested goods and services. Rather, the basis for the demand is that the Animas District could not produce a copy of a signed and dated contract with its service provider, Amherst Technologies, Inc. ("Amherst"), some six years earlier, for the 2004-2005 funding year. Specifically, the USAC Adjustment Report states:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a site visit it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on the inability of the applicants (sic) to provide a signed and dated contract. FCC rules require the applicants to have a valid contract as defined by the state's procurement laws and regulations at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract, the commitment is rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

At issue in this case is whether the Animas District's failure, in 2010, to locate a signed copy of a contract entered into in 2004, is such egregious non-compliance with federal law as to require it to reimburse USAC for an entire year of E-rate funds.

The Animas District requests that the Commission reverse USAC's decision to recover \$85,605.26 disbursed for the 2004 funding year and waive the requirement contained in 47 C.F.R. § 54.504(c), which states that an applicant for E-rate funding must have a contract or legally binding agreement in place prior to filing its FCC Form 471.

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**4. Statement of Grounds for Appeal/Waiver.**

**A. Good cause exists to waive Section 54.504(c) because strict compliance, in this case, is inconsistent with the public interest and causes substantial hardship for a rural school district.**

The Animas District's Form 471 from the 2004 funding year indicates that Amherst was the service provider for purposes of providing internal connections for the Animas District. Amherst filed Chapter 7 Bankruptcy in October 2005 and its assets have since been liquidated. More Direct, Inc., assumed the services provider responsibilities after Amherst's bankruptcy. *See* Exhibit C-4 and C-5, attached hereto.

The relationship between the Animas District and Amherst began prior to the 2004 funding year. The Animas District and Amherst executed a Letter of Intent for the 2003 funding year, a copy of which is attached hereto and incorporated herein as Exhibit "B". The Letter of Intent states that the Animas District intends Amherst to be the service provider for internal connections for Year 6 E-Rate Internal Connections.

Substantial evidence exists which shows the Animas District and Amherst shared the same intent that Amherst would continue to be the service provider for internal connections for the 2004 (Year 7) funding year. This is evidenced by email correspondence between the two entities, a summary of services from Amherst, including an equipment list, an invoice, purchase order for the 2004 funding year internal connections, and Service Certifications for SLD Invoices. Copies of these documents are attached hereto and incorporated herein as Exhibit "C".

Neither USAC nor the Animas District claim that the Animas District did not receive the internal connection goods and services from Amherst during the 2004 funding year. There is no evidence or allegation by USAC that the Animas District engaged in any activity intended to defraud or abuse the E-rate program.

Although USAC's Adjustment Report concludes that the Animas District did not have a "valid contract as defined by the state's procurement laws and regulations," there is sufficient evidence that Amherst and the Animas District had a legally binding agreement, based on a meeting of the minds regarding the scope of services, performance by Amherst, and payment by the Animas District in consideration for Amherst's performance by delivery of the requested equipment. *See Talbott v. Roswell Hosp. Corp.*, 2005-NMCA-109, ¶ 13 138 N.M. 189, 118 P.3d 194 ("Neither the absence of a formal, written agreement nor the lack of pecuniary interest is fatal to the existence of a contract."); *see also* the definition of "contract" in New Mexico Procurement Code, NMSA 1978, § 13-1-41 ("Contract" means any agreement for the procurement of items of tangible personal property, services or construction.) (emphasis added) and NMSA 1978, § 13-1-77 ("Purchase order" means the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.). In fact, New Mexico recognizes that a contract for goods and services is enforceable if the

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goods were received and accepted, even if all aspects of the statute of frauds are not followed. *See Elephant Butte Marina, Inc. v. Wooldridge*, 102 N.M. 286, 289, 694 P.2d 1351 (1985) (citing the New Mexico Uniform Commercial Code, NMSA 1978, § 55-2-201(3)(C)). Under either the Procurement Code or the Uniform Commercial Code the documentation attached to this appeal reflects the existence of a contract.

While it is unclear the exact time at which Amherst and the Animas District had a legally binding agreement for the 2004 funding year, and whether this date predates the filing of the Form 471, there are equitable grounds why a waiver of Section 54.504(c)'s requirement would support the intent and purpose of the E-rate program. USAC's belated demand for the funds disbursed for services already performed during the 2004 funding year, over six years ago, causes a substantial hardship to the Animas District and does not serve the public interest.

The Commission may waive a provision of its rules for good cause shown. 47 C.F.R. § 1.3. A rule also may be waived when the particular facts make strict compliance inconsistent with the public good. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The Commission may take into consideration hardship and equity. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd* 459 F.2d 1203 (D.C. Cir. 1972).

Evidence exists that the Animas District had a "legally binding agreement" with Amherst and waiver of Section 54.504(c)'s requirement to have a contract or agreement in place prior to the filing of Form 471 prevents substantial hardship. There is no evidence of fraud or abuse of E-rate funds, and the funds disbursed for the 2004 funding year have been used for services already performed. The USAC's demand frustrates the purpose of the Universal Service program because it forces the Animas District to return E-rate funds for goods and services already provided from a qualifying service provider.

In the FCC's Fifth Report and Order, and Order in CC Docket No. 02-6 released on August 13, 2004, the FCC recognized that there were circumstances when a violation of a procedural rule is not accompanied by evidence of waste fraud or abuse,

If, however, the procedural violation is inadvertently overlooked during the application phase and funds are disbursed, the Commission will not require that they be recovered, except to the extent that such rules are essential to the financial integrity of the program, as designated by the agency, or that circumstances suggest the possibility of waste, fraud, or abuse, which will be evaluated on a case-by-case basis.

69 F.R. 55111.

The Commission has granted waivers in similar circumstances which are compelling reasons in support of a waiver to the Animas District. For example, the Commission granted a waiver for the

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Cincinnati City School District in its May 26, 2006, Order in File No. SLD-376499, CC Docket No. 02-6 ("Cincinnati Appeal") determining that, because there was no finding of fraud or abuse and recovery of funds for services already provided, the USAC's demand for the return of E-rate funds created an undue hardship on the Cincinnati School District. The facts in this case are also substantially similar to the facts at issue in the Cincinnati Appeal. The Cincinnati School District had a signed Purchase Order prior to filing its Form 471 but did not have a signed contract. The Cincinnati School District had received more than \$1 million dollars of work from its service provider. The FCC found those facts sufficient for waiver of its rule requirement when the USAC rescinded its commitment only 17 months after it was issued. Here, the USAC is attempting to rescind a commitment that was relied on over six years ago.

Similarly, the Commission granted a waiver for the Barberton City School District, in its October 30, 2008 Order, File Nos. SLD-400938, because it found that the Barberton District had some form agreement during the relevant funding year and that there was no evidence of fraud or abuse.

The Animas District documentation available in 2010 demonstrates that there was no fraud or abuse, but merely that the Animas District, whose student population in 2004 numbered 310, exhibited incomplete records retention practices. Exhibit C-1 to this Appeal includes email communications dated March 14, 2005 from Animas District Superintendent Paul Benoit to Amherst. On March 14, 2005 Mr. Benoit wrote, "I am attaching a copy of the 486 so that you know I've submitted it! I will also get a PO processed for the amount approved through e-rate". Amherst's representative responds informing Mr. Benoit of the Form 486 submission location on line and includes the SLD FRN No. 1205338, the SLD approved amount of \$86,669.87 and the Animas District's obligation for the 10% that is not funded by SLD. Exhibit C-2 reflects the Animas District's initial Requisition form and both the Animas District File Copy and the Vendor Copy of PO # 1059 authorizing \$9,629.98, an amount greater than 10% Animas District's obligation based on the approved Funding Commitment of \$86,669.87. Thus, it is clear that the Animas District did pay its required 10% contribution at the beginning of the purchasing process for the goods and services Amherst was to provide.

Exhibit C-3 is an Amherst Invoice No. 2-Final under Animas District PO # 1059 for FRN # 1205338 in the total amount of \$61,853.22. The Animas District's payment obligation is \$6,872.58. The Animas District appears to have paid a total of \$16,502.56 or almost 20% of the SLD Funding Commitment. Consequently, there should be no claim that Animas did not complete its payment obligations under its contract with Amherst.

Exhibits C-4 and C-5 are Service Certifications for SLD Invoices dated 5-3-05 and 10-6-06, respectively. the 10-6-06 Certification states that "2/10/05- All Hardware Delivered" and "6/20/05-All goods were installed with the exception of the PIX." The available documents support the District's position that a legally binding agreement was in place reflecting offer, acceptance, and performance by delivery

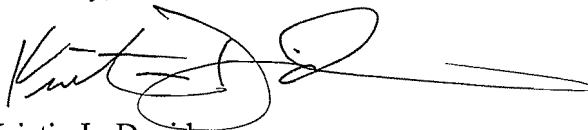
**Scheuer, Yost & Patterson**  
ATTORNEYS AT LAW

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**4. Conclusion.** Denying the Animas District's appeal for funding creates undue hardship and prevents the Animas District from receiving E-rate funding for work already performed by the service provider over six years ago. There is no evidence or finding by USAC that the Animas District engaged in activity intended to defraud or abuse the E-rate program, and a waiver of Section 54.504(c) is appropriate. Rather, the uncontested evidence shows that a legally binding agreement between the Animas District and Amherst existed for the 2004 funding year. A waiver of the Section 54.504(c) requirement supports the intent and purpose of E-rate to provide cost effective services to qualifying school districts.

If additional information is necessary, it will be provided upon request.

Sincerely,



Kristin L. Davidson

Enclosures

Exhibit A  
Exhibit B  
Exhibit C  
Affidavit of Betsy Ward

cc: Betsy Ward, Superintendent  
Animas Public School District



Schools and Libraries Division

## Notification of Commitment Adjustment Letter

Funding Year 2004: July 1, 2004 - June 30, 2005

July 21, 2010

Paul M. Benoit

ANIMAS SCHOOL DISTRICT 6

HWY 330 &amp; HWY 9

ANIMAS, NM 88020

Re: Form 471 Application Number: 427902  
Funding Year: 2004  
Applicant's Form Identifier: 2004200530  
Billed Entity Number: 143316  
FCC Registration Number: 0012816369  
SPIN: 143022506  
Service Provider Name: Gov Connection, Inc.  
  
Service Provider Contact Person: Patricia Holland

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981  
Visit us online at: [www.usac.org/sl](http://www.usac.org/sl)

EXHIBIT

A

tabbles

**TO APPEAL THIS DECISION:**

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the

- Billed Entity Name,
- Form 471 Application Number,
- Billed Entity Number, and
- FCC Registration Number (FCC RN) from the top of your letter.

3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.

4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.

5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

## FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Patricia Holland  
Gov Connection, Inc.

**Funding Commitment Adjustment Report for  
Form 471 Application Number: 427902**

Funding Request Number:	1205338
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143022506
Service Provider Name:	Gov Connection, Inc.
Contract Number:	N/A
Billing Account Number:	N/A
Site Identifier:	143316
Original Funding Commitment:	\$86,669.87
Commitment Adjustment Amount:	\$86,669.87
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$85,605.26
Funds to be Recovered from Applicant:	\$85,605.26

**Funding Commitment Adjustment Explanation:**

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a site visit it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on the applicants inability to provide a signed and dated contract. FCC rules require applicants to have a valid contract as defined by the applicants state procurement laws and regulations at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

## LETTER OF INTENT

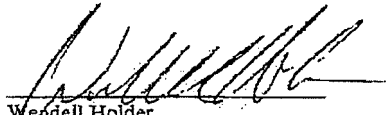
Amherst Computer Products SW, LP (Amherst- SPIN 143022506) has submitted a proposal to Animas Public Schools (Animas) for consideration in their Year 6 E-Rate application for Internal Connections.

Animas intends to use Amherst as their Service Provider for Internal Connections as detailed in Amherst's proposal

Amherst intends to deliver the products and services as detailed on their proposal for Year 6 E-Rate Internal Connections.

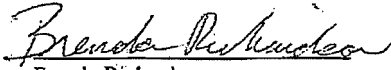
Animas and Amherst realize that this is a Letter of Intent only, and that the execution of any project is contingent upon the funding being provided by the Schools and Libraries Division of the USAC.

Signed:



Wendell Holder  
Amherst Computer Products SW, LP

2/5/03  
Date



Brenda Richardson  
Animas Public Schools

2/6/03  
Date

EXHIBIT

B

From: DeRosa, Bryan [mailto:BDeRosa@amherst1.com]  
Sent: Monday, March 14, 2005 2:20 PM  
To: Paul Benoit  
Subject: RE: 486

Mr. Benoit,

Here is the PD/486 information regarding your Year 7 E-Rate project. All I need to get started is Animas School's PD for your 10% of the amount funded and a copy of the 486 documents which can be filled out on-line on the SLD website. I have included all of the details below.

Please issue a PO in the amount of \$9,629.98 (Animas 10%) to Amherst Technologies. The 486 can be filled out online on the SLD website at: <http://www.sl.universalservice.org/> <http://www.sl.universalservice.org/>

SLD FRN #: 1205338

Total Project amount: \$96,299.85

SLO Amount: \$86,669.87

Animas PS PD Amount: \$9,629.98

Please email me or call me anytime should you need my assistance with anything whatsoever. Have a good rest of the day.

Thanks,

Bryan

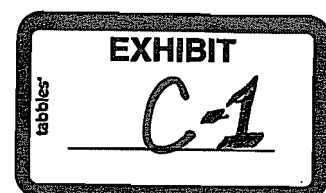
Bryan De Rosa  
Account Executive  
Amherst Technologies, LLC  
915-225-2038 p 915-298-0138 f

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From: Paul Benoit [mailto:pbenoit@animask12.net]  
Sent: Monday, March 14, 2005 1:41 PM  
To: Brian DeRosa (Business Fax)  
Subject: 486

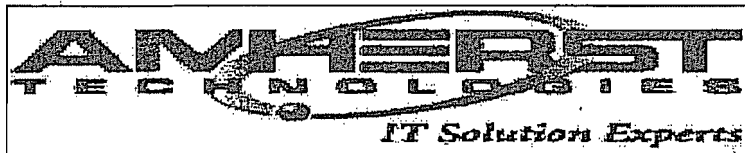
Brian,  
Good Afternoon! I am attaching a copy of the 486 so that you know that I've submitted it! I will also get a PO processed for the amount approved through e-rate. It seems they've approved 86K and disallowed 13K  
So, do I make my PD for 10% of the 86K???

ole0.bmp  
Paul M. Benoit, Superintendent  
Animas Public Schools  
PO Box 85  
#1 Panther Blvd  
Animas, NM 88020  
505.548.2299  
505.548.2388 (Fax)  
pbenoit@animask12.net



**REQUISITION**  
ANIMAS PUBLIC SCHOOLS  
P.O. Box 85  
ANIMAS, NM 88020

**EXHIBIT**  
**C-2**



3800 N. Mesa, Suite B-1  
El Paso, TX 79902  
915-225-2007  
915-298-0207 Fax  
Wendell Holder, Account Manager  
wholder@amherst1.com  
SPIN# 143022506

#### ANIMAS PUBLIC SCHOOLS YEAR SEVEN E-RATE SUMMARY

	Total
Animas Elementary School	\$ 53,485.92
Animas Middle School	\$ 24,559.40
Animas High School	\$ 21,715.40
 TOTALS	 \$ 99,760.72

ANIMAS PUBLIC SCHOOLS RESERVES THE RIGHT TO SUBSTITUTE  
FUNCTIONALLY EQUIVALENT EQUIPMENT

**ANIMAS ELEMENTARY**

NETWORK ELECTRONICS			List	Ext	Animas	Ext
Qty	Product	Description	Price Ea.	List Price	Cost Ea.	Animas Cost
1	PIX-515E-UR-BUN	PIX 515E Unrestricted Bundle Firewall	\$6,995.00	\$6,995.00	\$4,756.60	\$4,756.60
1	CON-SNT-PKG9	Cisco SmartNet 8x5xNBD- First Year Free-3550-12G	\$0.00	\$0.00	\$0.00	\$0.00
5	AIR-BR350-A-K9	Cisco 802.11B Wireless Bridge	\$1,299.00	\$6,495.00	\$883.32	\$4,416.60
3	AIR-ANT24120	Cisco 12 DBI 2.4Ghz OmniMast Antenna	\$695.00	\$2,085.00	\$472.60	\$1,417.80
2	AIR-ANT1949	Cisco 13.5 Yagi Mast Mount Antenna	\$369.00	\$738.00	\$250.82	\$501.84
5	AIR-ACC3354	Cisco Lightening Arrestor w/Grounding Ring	\$209.00	\$1,045.00	\$142.12	\$710.60
5	AIR-CAB050LL-R	50 Ft. Low Loss Cable Assembly W/RP-TNC	\$199.00	\$995.00	\$135.32	\$676.60
5	MOUNT	Miscellaneous Mounting Hardware			\$200.00	\$1,000.00
5	CON-SNT-PKG2	Cisco SmartNet 8x5xNBD- First Year Free-BR350	\$0.00	\$0.00	\$0.00	\$0.00
2	AIR-AP1120B-A-K9	Cisco 802.11B Wireless Access Point	\$599.00	\$1,198.00	\$407.32	\$814.64
2	AIR-PWRINJ2	Power Injector for Wireless Access Point	\$59.00	\$118.00	\$40.12	\$80.24
2	CON-SNT-PKG1	Cisco SmartNet 8x5xNBD- First Year Free-AP1120B	\$0.00	\$0.00	\$0.00	\$0.00
5	SD205	Cisco/Linksys 5-port Autosensing 10/100 Switch			\$49.00	\$245.00
60	Installation Services	Configuration/Implementation of Network Electronics			\$125.00	\$7,500.00
TOTAL NETWORK ELECTRONICS						\$22,119.92
WIRING/CABLING						
8	CABLING	Structured Wiring/Cabling Drops			\$ 195.00	\$ 1,560.00
MAINTENANCE SERVICES			CISCO			
			SMARTNET	OTHER		TOTAL
1	WS-4507R	Catalyst 4500 Chassis (7-Slot), fan, no p/s, Red Sup Capable	\$ 2,650.00	\$ 1,500.00	\$	4,150.00
2	WS-C3550-48-SM1	48 10/100 and 2 GBIC ports; Enhanced Multilayer SW Image	\$520.00	\$500.00	\$	1,020.00
1	WS-C3550-12G	10 GBIC Based Gigabit Ether net ports and 2 10/100/1000 ports	\$695.00	\$350.00	\$	1,045.00
5	WS-C3524-XL-EN	Cisco Catalyst 3524 Switch	\$ 1,300.00	\$ 1,250.00	\$	2,550.00
1	CISCO3640	Cisco 3640 Router	\$ 995.00	\$ 500.00	\$	1,495.00
1	WS-C4006-S2	Cisco 4006 Catalyst, Sup 2	\$ 1,600.00	\$ 500.00	\$	2,100.00
4	AIR-AP1120B-A-K9	Cisco 802.11B Wireless Access Point	\$ 276.00	\$ 200.00	\$	476.00
1	IPVC-3510-MCU	Cisco 3510 Multipoint Conferencing Unit	\$ 2,650.00	\$ 1,000.00	\$	3,650.00
1	IPVC-3520-GW-4B	Cisco 3520 Video Gateway	\$ 1,600.00	\$ 500.00	\$	2,100.00
1	CE-560AV-CDN-K9	Cisco Content Engine 560AV	\$ 1,600.00	\$ 500.00	\$	2,100.00
1	CDM-4630	Cisco Content Distribution Manager	\$ 2,020.00	\$ 1,000.00	\$	3,020.00
1	CISCO3745	Cisco 3745 Router	\$ 1,600.00	\$ 500.00	\$	2,100.00
1	2200-12323-001	Polycom VS4000 (On-Site 5x9 Same Business Day Response)	\$ -	\$ 1,000.00	\$	1,000.00
2	311526-001	Compaq ProLiant ML350	\$ -	\$ 2,000.00	\$	2,000.00
TOTAL MAINTENANCE SERVICES						\$ 28,806.00
TRAINING/KNOWLEDGE TRANSER						
8		Basic Instruction on Eligible Product			\$125.00	\$1,000.00
TOTAL ANIMAS ELEMENTARY SCHOOL						\$53,485.92
ANIMAS PUBLIC SCHOOLS RESERVES THE RIGHT TO SUBSTITUTE FUNCTIONALLY EQUIVALENT EQUIPMENT						53485.92 24559.4 21715.4

**ANIMAS MIDDLE SCHOOL**

NETWORK ELECTRONICS			Ext	Ext		
Qty	Product	Description	List Price Ea.	Animas Cost Ea.	Animas Cost	
5	AIR-BR350-A-K9	Cisco 802.11B Wireless Bridge	\$1,299.00	\$6,495.00	\$883.32	\$4,416.60
5	AIR-ANT1949	Cisco 13.5 Yagi Mast Mount Antenna	\$368.00	\$1,845.00	\$250.92	\$1,254.60
5	AIR-ACC3354	Cisco Lightning Arrestor w/Grounding Ring	\$209.00	\$1,045.00	\$142.12	\$710.60
5	AIR-CAB050LL-R	50 Ft. Low Loss Cable Assembly W/RP-TNC	\$199.00	\$995.00	\$135.32	\$676.60
5	MOUNT	Miscellaneous Mounting Hardware			\$200.00	\$1,000.00
5	CON-SNT-PKG2	Cisco SmartNet 8x5xNBD- First Year Free-BR350	\$0.00	\$0.00	\$0.00	\$0.00
30	Installation Services	Configuration/Implementation of Network Electronics			\$125.00	\$3,750.00
TOTAL NETWORK ELECTRONICS						\$11,808.40
WIRING/CABLING						
8	CABLING	Structured Wiring/Cabling Drops			\$ 195.00	\$ 1,560.00
MAINTENANCE SERVICES			CISCO			
			SMARTNET	OTHER	TOTAL	
2	WS-C3550-48-SMI	48 10/100 and 2 GBIC ports; Enhanced Multilayer SW Image	\$520.00	\$500.00	\$	1,020.00
1	WS-C3550-12G	10 GBIC Based Gigabit Ether net ports and 2 10/100/1000 ports	\$695.00	\$350.00	\$	1,045.00
5	WS-C3524-XL-EN	Cisco Catalyst 3524 Switch	\$ 1,300.00	\$1,250.00	\$	2,550.00
4	AIR-AP1120B-A-K9	Cisco 802.11B Wireless Access Point	\$ 276.00	\$ 200.00	\$	476.00
1	CE-560AV-CDN-K9	Cisco Content Engine 560AV	\$ 1,600.00	\$ 500.00	\$	2,100.00
1	2200-12323-001	Polycom VS4000 (On-Site 5x9 Same Business Day Response)	\$ -	\$1,000.00	\$	1,000.00
2	311526-001	Compaq Proliant ML350	\$ -	\$2,000.00	\$	2,000.00
TOTAL MAINTENANCE SERVICES						\$ 10,191.00
TRAINING/KNOWLEDGE TRANSER						
8		Basic Instruction on Eligible Product			\$125.00	\$1,000.00
TOTAL ANIMAS MIDDLE SCHOOL						\$24,559.40

ANIMAS PUBLIC SCHOOLS RESERVES THE RIGHT TO SUBSTITUTE  
FUNCTIONALLY EQUIVALENT EQUIPMENT

**ANIMAS HIGH SCHOOL**

NETWORK ELECTRONICS			List	Ext	Animas	Ext
Qty	Product	Description	Price Ea.	List Price	Cost Ea.	Animas Cost
5	AIR-BR350-A-K9	Cisco 802.11B Wireless Bridge	\$1,299.00	\$6,495.00	\$883.32	\$4,416.60
5	AIR-ANT1949	Cisco 13.5 Yagi Mast Mount Antenna	\$369.00	\$1,845.00	\$250.92	\$1,254.60
5	AIR-ACC3354	Cisco Lightning Arrestor w/Grounding Ring	\$209.00	\$1,045.00	\$142.12	\$710.60
5	AIR-CAB050LL-R	50.Ft. Low Loss Cable Assembly W/RP-TNC	\$199.00	\$995.00	\$135.32	\$676.60
5	MOUNT	Miscellaneous Mounting Hardware			\$200.00	\$1,000.00
5	CON-SNT-PKG2	Cisco SmartNet 8x5xNBD- First Year Free-BR350	\$0.00	\$0.00	\$0.00	\$0.00
30	Installation Services	Configuration/Implementation of Network Electronics			\$125.00	\$3,750.00
TOTAL NETWORK ELECTRONICS						\$11,808.40
WIRING/CABLING						
2	CABLING	Structured Wiring/Cabling Drops			\$ 195.00	\$ 390.00
MAINTENANCE SERVICES				CISCO		
				SMARTNET	OTHER	TOTAL
1	WS-C3550-48-SMI	48 10/100 and 2 GBIC ports; Enhanced Multilayer SW Image		\$260.00	\$250.00	\$ 510.00
5	WS-C3524-XL-EN	Cisco Catalyst 3524 Switch		\$ 1,300.00	\$1,250.00	\$ 2,550.00
3	AIR-AP1120B-A-K9	Cisco 802.11B Wireless Access Point		\$ 207.00	\$ 150.00	\$ 357.00
1	CE-560AV-CDN-K9	Cisco Content Engine 560AV		\$ 1,600.00	\$ 500.00	\$ 2,100.00
1	2200-12323-001	Polycom VS4000 (On-Site 5x9 Same Business Day Response)		\$ -	\$1,000.00	\$ 1,000.00
2	311526-001	Compaq Proliant ML350		\$ -	\$2,000.00	\$ 2,000.00
TOTAL MAINTENANCE SERVICES						\$ 8,517.00
TRAINING/KNOWLEDGE TRANSER						
8		Basic Instruction on Eligible Product			\$125.00	\$1,000.00
TOTAL ANIMAS HIGH SCHOOL						\$21,715.40

ANIMAS PUBLIC SCHOOLS RESERVES THE RIGHT TO SUBSTITUTE  
FUNCTIONALLY EQUIVALENT EQUIPMENT

**Purchase Order****ANIMAS PUBLIC SCHOOLS****No. 1059****P.O. BOX 85, #1 PANTHER BLVD.****ANIMAS, NM 88020**

Confirmation Fax # (505)-548-2388

Send 2 Copies of Invoices

P.O.# must be on all documents

Tax Exempt #01602551002

Mail Invoices to above address

MSDS sheets must accompany all products

Accounts Payable (505)-548-2724

P.O. is void after 90 Days

P.O. Date: 03/16/2005

Questions ? ACCOUNTS PAYABLE 505-548-2724 Account:

P.O. Issued To:

Ship To:

AMHERST TECHNOLOGIES

ANIMAS PUBLIC SCHOOLS

#1 PANTHER BLVD.

3800 N. MESA, SUITE B1

P.O. BOX 85

EL PASO TX 79902

ANIMAS, NM 88020

(505) 548-2299

Contact: BRYAN DE ROSA

Location:

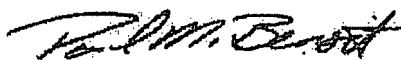
Phone: (915) 225-2038 Fax: (915) 225-2080

Project # TECHNOLOGY Req# 1123

Requestor: BRENDA RICHARDSON

Qty	Unit	Part#	Description	Account Number	Tax	Freight	Unit Price	Extended
1	EA		E-RATE YEAR 7 SLD FRN NUMBER 1205338	31700-11-3615-0000-00	\$0.00	\$0.00	\$9,629.98	\$9,629.98

APPROVAL SIGNATURES:



NOTES:

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Sub-Total:	\$9,629.98
Freight:	\$0.00
Tax:	\$0.00
Total Amount:	\$9,629.98

Order Via: Mail

**FILE COPY**

Wednesday, June 22, 2005

Page 1 of 1

**Purchase Order****ANIMAS PUBLIC SCHOOLS****No. 1059**

P.O. BOX 85, #1 PANTHER BLVD.

ANIMAS, NM 88020

Send 2 Copies of Invoices  
Mail Invoices to above address  
P.O. is void after 90 DaysP.O.# must be on all documents  
MSDS sheets must accompany all products

P.O. Date: 03/16/2005

Questions ? ACCOUNTS PAYABLE 505-548-2299

Account:

P.O. Issued To:

AMHERST TECHNOLOGIES

3800 N. MESA, SUITE B1  
EL PASO TX 79902

Ship To:

ANIMAS PUBLIC SCHOOLS  
#1 PANTHER BLVD.

P.O. BOX 85

ANIMAS, NM 88020

(505) 548-2299

Contact:

Phone: ( ) - 915

Fax: (915) 298-0207

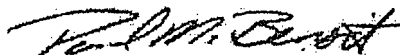
Location:

Project # TECHNOLOGY Req# 1123

Requestor: BRENDA RICHARDS

Qty	Unit	Part#	Description	Tax	Freight	Unit Price	Extended
1	EA		E-RATE YEAR 7 SLD FRN NUMBER. 1205338	\$0.00	\$0.00	\$9,629.98	\$9,629.98

APPROVAL SIGNATURES:



Notes:

	<b>FAXED</b> 3/21/05

Sub-Total:	\$9,629.98
Freight:	\$0.00
Tax:	\$0.00
Total Amount:	\$9,629.98

Order Via: Mail

**VENDOR COPY**

Wednesday, March 16, 2005

Page 1 of 1

**Kathy Johnson**

---

**From:** Brenda Richardson  
**Sent:** Tuesday, June 21, 2005 4:46 PM  
**To:** Kathy Johnson  
**Subject:** Final Invoice for Animas 10% for Year 7 E-Rate Project

Hi Kathy,  
Here is the last invoice for the erate... but the job hasn't been completed yet... just so you know.

---

**From:** DeRosa, Bryan [mailto:BDeRosa@amherst1.com]  
**Sent:** Tue 6/21/2005 12:30 PM  
**To:** Paul Benoit  
**Cc:** Brenda Richardson  
**Subject:** Final Invoice for Animas 10% for Year 7 E-Rate Project

Paul/Brenda,

Per my last conversation with Paul I am sending the final invoice for Animas's 10% for the Year 7 E-Rate project. Eddie is planning on completing the wireless project in July and he will be touching base with Brenda today to discuss the timeline and project deliverables. Also, I hope the wireless cards are working out for your district. All of your networking hardware has also been covered by Cisco Smartnet for Year 7 as well. Please email me or call me anytime should you have any questions whatsoever.

<<Animas\_Year7\_E-Rate\_Invoice#2FINAL.xls>>

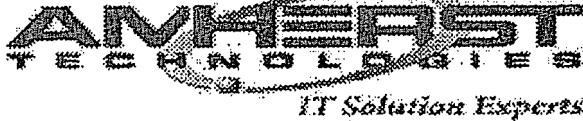
Thanks,  
Bryan

**Bryan De Rosa**  
**Account Executive**  
**Amherst Technologies**  
915-225-2038 Phone 866-623-1148 Fax 915-373-3445 Cell

<http://www.amhersttechnologies.com>

6/21/2005





### Southwest Sales Office

3800 N. Mesa  
El Paso, TX 79902  
(915) 225-2038 fax: (915) 298-0138  
email: bderosa@amherst1.com

# Invoice

No. 2\_FINAL

<b>Client Information</b>	
Name	Animas Public Schools
Address	#1 Panther BLVD. Animas, NM 88020
Phone	(505) 505-548-2299 Fax

Date	06/21/2005
Contact	Brenda Richardson
Pricing is based upon	Year 7 E-Rate Project

Qty	Description	Unit Price	TOTAL
	<b>Summary</b>		
1	Maintenance Services 135.52 Hours	16,940.00	16,940.00
1	Year 7 Project/Installation for Elementary, Middle, High School	51,785.80	51,785.80
FRN #'s: 1205338 Animas PO#: 1059			

<b>Project Information</b>	
Name	Animas Public Schools
Ref. No.	Year 7 E-Rate Delivery Complete

SubTotal	\$ 68,725.80
Shipping & Handling	
State Tax	
<b>Total</b>	<b>\$ 68,725.80</b>

SLD Amount: \$ 61,853.22  
Animas Public School's Amount: \$ 6,872.58

In the matter of Request for Review by the Animas Public  
School District of Decision of Universal Service Administrator

Letter of Appeal and Request for Waiver  
CC Docket No. 96-45  
CC Docket No. 02-6

Billed Entity Name:	Animas Public School District 6
Form 471 Application Number:	427902
Funding Year:	2004
Applicant's Form Identifier:	2004200530
Billed Entity Number:	143316
FCC Registration Number:	0012816369
SPIN:	143022506
Service Provider Name:	Gov Connection, Inc.
Service Provider Contact Person:	Patricia Holland

STATE OF NEW MEXICO    )  
  ) S.S.  
COUNTY OF HILDAGO    )

**AFFIDAVIT OF BETSY WARD**

I, Betsy Ward, being first duly sworn on oath deposes and states,

1.       I am over the age of eighteen years and the statements in this affidavit are based on my personal knowledge.

2.       I am employed by the Board of Education for the Animas Public School District ("Board" and "District") as its superintendent.

3.       I have read the Letter of Appeal and Request for Waiver ("Letter of Appeal") prepared by Scheuer, Yost & Patterson, P.C. in response to the USAC's Funding Commitment Adjustment Report, dated July 21, 2010, know the contents thereof, and that the same are true and correct to the best of my knowledge and belief.

4.       I also have reviewed the attachments to the Letter of Appeal, Exhibits A, B and C. The documents contained in Exhibits B and C are records of the District that were in made at or near

the time by a person with knowledge and have been kept in the course of a regularly conducted business activity. It is the regular practice of the District to maintain these types of records related to the E-rate program.

5. The Letter of Intent, Exhibit B to the Letter of Appeal, was executed on behalf of the District by Brenda Richardson, who was the Technology Director for the District.

6. The documents contained in Exhibit C identify Paul Benoit as the District contact. Mr. Benoit was the superintendent for the District during the 2004-2005 school year. As superintendent, Mr. Benoit was authorized to sign the purchase order contained in Exhibit C for the E-rate goods and services provided to the District by Amherst Technologies, Inc.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

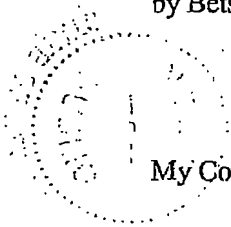
FURTHER AFFIANT SAYETH NOT.

Betsy Ward  
BETSY WARD

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of September 2010,  
by Betsy Ward.

Parson M. Manting  
Notary Public

My Commission Expires: 8/17/13



### Service Certification for SLD Invoices

<b>Service Provider Name</b>	Amherst Computer Products SW LP El Paso
<b>Service Provider SPIN</b>	143022506
<b>Service Provider Invoice #</b>	7008526
<b>Undiscounted Invoice Amount</b>	\$96,299.85
<b>Discounted Invoice Amount</b>	\$24,816.60

<b>Applicant Name</b>	ANIMAS SCHOOL DISTRICT 6
<b>Representative / Contact Name</b>	Paul M. Benoit
<b>Representative / Contact Title</b>	Superintendent
<b>Representative / Contact Phone</b>	505 548 2299
<b>Billed Entity Number (BEN)</b>	143316
<b>471 Number</b>	427902
<b>FRN</b>	1205338
<b>Date Goods/Services Delivered</b>	As of 5-3-05
<b>Date Goods/Services were or will be Installed</b>	
<b>Date Applicant Portion Paid and Check No. or Date will be Paid</b>	

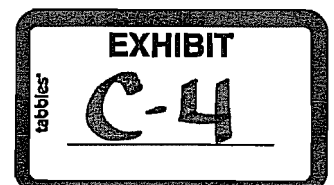
This is to certify that I am authorized to represent the above named Applicant. This is also to certify the services described on the attached vendor invoice were delivered and/or installed as indicated by the date(s) above.

Or The charges represented by the above represented invoice are deposits or up-front charges for services, which have not been delivered, and have been agreed to based on the contract between the above referenced Applicant and Service Provider.

Copy of <u>detailed</u> vendor invoice must be attached. Contract with Service Provider above is for Delivery only                      Yes <input type="checkbox"/> No <input type="checkbox"/> Delivery and Installation      Yes <input type="checkbox"/> No <input type="checkbox"/>	Copy of <u>supporting contract</u> must be attached if indicated below.  Supporting Contract Required YES <input type="checkbox"/> NO <input type="checkbox"/>
Signed: <i>[Signature]</i>	Signed:
Date: 5-3-05	Date:

Revised 04/05/05

Schools and Library Division (USAC)



## Service Certification for SLD Invoices

<b>Service Provider Name</b>	MoreDirect, Inc. (Amherst Technologies)
<b>Service Provider SPIN</b>	143022506
<b>Service Provider Invoice #</b>	646493 (7015643)
<b>Undiscounted Invoice Amount</b>	\$4,8536.86
<b>Discounted Invoice Amount</b>	\$4853.69

<b>Applicant Name</b>	ANIMAS SCHOOL DISTRICT 6
<b>Representative / Contact Name</b>	Brenda Richardson
<b>Representative / Contact Title</b>	Technology Specialist
<b>Representative / Contact Phone</b>	505-548-2299 ext 237
<b>Billed Entity Number (BEN)</b>	143316
<b>471 Number</b>	427902
<b>FRN</b>	1205338
<b>Date Goods/Services Delivered</b>	2/10/2005 —All Hardware delivered
<b>Date Goods/Services were or will be Installed</b>	6/20/2005 —All goods on invoice 7015643 were installed <b>with the exception of the PIX</b>
<b>Date Applicant Portion Paid and Check No. or Date will be Paid</b>	A PO# was issued to Amherst 3/10/05 and no invoice from Amherst was forthcoming. Po was closed on 6/30/05.

This is to certify that I am authorized to represent the above named Applicant. This is also to certify the services described on the attached vendor invoice were delivered and/or installed as indicated by the date(s) above.

Or The charges represented by the above represented invoice are deposits or up-front charges for services, which have not been delivered, and have been agreed to based on the contract between the above referenced Applicant and Service Provider

<b>Copy of <u>detailed</u> vendor invoice must be attached. Contract with Service Provider above is for</b> Delivery only Yes _____ No _____ Delivery and Installation Yes <input checked="" type="checkbox"/> No _____	<b>Copy of <u>supporting contract</u> must be attached if indicated below</b>  Supporting Contract Required YES _____ NO <input checked="" type="checkbox"/>
Signed: <u>Brenda Richardson</u>	Signed: _____
Date: <u>10/6/06</u>	Date: _____

Revised 04/05/05

Schools and Library Division (USAC)

